

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 9, 2001

D035537 National Steel & Shipbuilding Company v. California Unemployment Insurance Appeals Board/Acosta et al./United Waterfront Council

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D034864 Ferrell v. County of San Diego

The opinion filed June 8, 2001, is ordered certified for publication with the exception of Discussion, part I, part II (A and B), part III, part IV and part V.

The attorneys of record are:

McKenna & Cuneo, Michael H. Fish; Marks & Golia and Davide Golia for Plaintiff and Appellant.
John J. Sansone, County Counsel, William A. Johnson, Jr. and Timothy M. Barry, Deputy County Counsel for Defendant and Appellant.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares

Clerk: D. E. Moore

D035777 People v. Northcutt

Cause called on merits. Terry R. Kolkey, Esq. argued for appellant. Bob Foster, Deputy Attorney General argued for respondent. Mr. Kolkey replied. Cause submitted.

D036128 Reaume v. Coulam

Cause called on merits. Donnie Ray Cox, Esq. argued for appellant. Karen L. Bilotti, Esq. was present in oral argument for respondent, but had nothing to add to the argument. Cause submitted.

D035522 People v. Matwyuk

Cause called on merits. Robert L. Swain, Esq. argued for appellant. Matthew Mulford, Deputy Attorney General argued for respondent. Mr. Swain replied. Cause submitted.

D035799 People v. Trac

Cause called on merits. Richard L. Schwartzberg, Esq. argued for appellant. Adrianna Rincon, Deputy Attorney General argued for respondent. Mr. Schwartzberg replied. Cause submitted.

D037545 Sunset Moving & Storage Corp. v. Amato

Cause called on merits. Niall Sweetnam, Esq. argued for appellant/cross-respondent. John Charles Lautsch, Esq. argued for respondent/cross-appellant. Allan Songstad, Esq. argued for respondent, Bekins Van Lines, Inc. Jeffrey Louis Farano, Esq. argued for respondent, Far West. Sweetnam replied. Mr. Lautsch replied. Cause submitted.

Court recessed at 11:23 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 9, 2001 (Continued)

D037535 Medix Ambulance Service v. City of Orange

Cause called on merits. Michael Leight, Esq. argued for appellant/cross-respondent. David Allen DeBerry, Esq. argued for respondent/cross-appellant. Mr. Leight replied. Mr. DeBerry replied on cross-appeal. Cause submitted.

Court recessed at 12 noon until 1 p.m.

D037574 People v. Spencer

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately (Cal Rules of Court, rule 38).

D036681 People v. Turner

Judgment affirmed. Nares, J.; We Concur: Kremer, P.J., McIntyre, J.

D034992 People v. Dennis

The judgment is reversed. Huffman, J.; We Concur: Kremer, P.J., Nares, J.

D037471 In re Jessica D. et al., Juveniles

The orders are affirmed. Benke, J.; We Concur: Kremer, P.J., O'Rourke, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares
Deputy Clerk: D. E. Moore

D033915 Haskett v. The Villas at Desert Falls et al.

Cause called on merits. Benjamin A. Nix, Esq. argued for appellant/cross-respondent, ReMatch, Inc., and etc. Jeff M. Yoss, Esq. argued for appellant/cross-respondent, The Villas at Desert Falls. James S. Graham, Esq. argued for respondent/cross-appellant. Mr. Yoss replied. Cause submitted.

D037273 Louvier et al. v. Southern Sun Construction Company, Inc.

Cause called on merits. Richard V. McMillan, Esq. argued for appellant. Michael Alan Scherago, Esq. argued for respondent. Mr. McMillan replied. Cause submitted.

Court recessed at 1:35 to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Gilbert Nares

D037279 Stewart v. State Farm Fire and Casualty Company

Cause called on merits. Troy Stewart argued for appellant in pro per. Pamela Dunn, Esq. argued for respondent. Mr. Stewart replied. Cause submitted.

Court recessed at 2 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 9, 2001 (Continued)

D035679 People v. Hanna

Cause called on merits. Joel Liberson, Esq. argued for appellant. Bob Foster, Deputy Attorney General argued for respondent. Mr. Liberson replied. Cause submitted.

D035197 People v. Mays

Cause called on merits. Wayne Phillip Higgins, Esq. argued for appellant. Karl Terp, Deputy Attorney General argued for respondent. Mr. Higgins replied. Cause submitted.

Court recessed at 2:40 p.m.until Tuesday, July 10, 2001 at 9 a.m.

D036890 People v. Wallace

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D038280 Yvon v. Superior Court of San Diego County/People

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 10, 2001

D037228 O'Connor v. Brentwood Homes

The appeal is dismissed.

D037971 In re Marriage of Dawe

The motion to appeal is denied.

D037992 Bella Collina Ltd. v. Superior Court of San Diego County/Reid et al.

The petition is denied.

D036481 In re Nicholson on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Judith Haller and James McIntyre

Clerk: W. Pasek

D035765 Interbank Funding Group v. Rockwell Financial Group et al.

Cause called on merits. Gregory Lee Bosse, Esq. waived opening argument for appellant.
James Peterson, Esq. argued for Respondent. Mr. Bosse replied. Mr. Peterson responded.
Cause submitted.

D033406 Tabert et al. v. Jacquet et al.

Cause called on merits. Stephanie Williams, Esq. argued for appellant/cross-respondent Jacquet.
Kathryn Meadows, Esq. argued for respondent/cross-appellant Tabert et al. Ms. Williams replied. Lisa
Willhelm Cooney appeared for respondent Beaumont and did not present argument. Cause submitted.

D037551 Petty v. ICU Medical Inc.

Cause called on merits. Ronald Kohut, Esq. argued for appellant. David Niddrie, Esq. argued for
respondent/cross-appellant. Mr. Kohut replied. Cause submitted.

Court recessed at 10:43a.m. until 1:30p.m.

D037904 In re Holloway on Habeas Corpus

The petition is denied.

D037900 In re Adams on Habeas Corpus

The petition is denied.

D037679 In re Calderon on Habeas Corpus

The petition is denied.

D037549 Haskell et al. v. Peterson et al.

The judgment is affirmed. Kremer, P. J.; We Concur: Nares, J., McDonald, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 10, 2001 (Continued)

D037181 Butler v. Barranco

The appeal is dismissed pursuant to rule 17(a).

D036982 Cho et al. v. Kim et al.

The appeal is dismissed pursuant to rule 17(a).

D037903 In re Holloway on Habeas Corpus

The petition is denied.

D037923 Baumer v. Superior Court of San Diego County/People

The petition is denied.

D036733 People v. Leon

The appeal is dismissed. Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.

D035786 In re K. J., a Juvenile

The true finding on the section 12022, subdivision (a) enhancement to count 3 (carjacking) is reversed. The remainder of the judgment is modified as follows and affirmed as so modified: the term for the sanction 12022, subdivision (a)(1) enhancement to count 2 (robbery) is four months (rather than one year) and the total maximum period of confinement is 10 years four months (rather than 12 years). The juvenile court is directed to file an amended commitment and to forward it to CYA. Haller, J. We Concur: Kremer, P.J., Benke, J.

D037925 In re York on Habeas Corpus

The petition is denied.

D037833 In re Morgans on Habeas Corpus

The petition is denied.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice and the Honorable Associate Justice Richard Huffman
Clerk: D. E. Moore

D034614 Wilson v. County of San Diego

Cause called on merits. Deborah A. McCarthy, Deputy County Counsel argued for respondent. Norma S. Marshall, Esq. argued for respondent, Polite and etc. Lois Brown Kelly, Esq. argued for appellant. To be submitted at a later date.

D035139 F. M. Bratcher v. Buckner

Cause called on merits. James C. Mitchell, Esq. argued for appellant. Christopher E. McAteer, Esq. argued for respondent. To be submitted at a later date.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

July 10, 2001 (Continued)

Court recessed at 2:21 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

D034974 People v. Harbour

Cause called on merits. Robert W. Gehring, Esq. argued for appellant. Laura Halgren, Deputy Attorney General argued for respondent. Mr. Gehring replied. Cause submitted.

D035871 Kirk v. Chuey's Numero Uno, Inc., et al.

Cause called on merits. David Kay, Esq. argued for appellant. Karen L. Bilotti, Esq. argued for respondent, Chuey's Numero Uno, Inc. Kenneth Scott Perri, Esq. argued for respondent, Elite Show Services, Inc. Mr. Kay replied. Cause submitted.

Court recessed at 3:25 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D036302 Silva v. Department of Motor Vehicles

Cause called on merits. Douglas Scott Waggaman, Esq. argued for appellant. Judith R. Seligman, Deputy Attorney General argued for respondent. Mr. Waggaman replied. Cause submitted.

Court recessed at 4:05 p.m. until Wednesday, July 11, 2001 at 9:00 a.m.

D033801 Velarde et al. v. Western Auto Supply Company, Inc., et al.

The request for publicaition of the opinion is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 11, 2001

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller

Clerk: D. E. Moore

D035991 Nautronix, Inc., et al. v. Certain Underwriters at Lloyd's

Cause called on merits. Gregory Dahl, Esq. argued for appellant. James W. Huston, Esq. argued for respondent. Mr. Dahl replied. Cause submitted.

Court recessed at 9:32 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre

D037287 In re Carla S., et al., juveniles

Cause called on merits. Donna Kaiser, Esq. argued for appellant. Gary Seiser, Deputy County Counsel argued for respondent. Ms. Kaiser replied. Cause submitted.

D037331 In re Thomas H., a juvenile

Cause called on merits. Donna Kaiser, Esq. argued for appellant. Dee Dykeman, Deputy County Counsel argued for respondent. Ms. Kaiser replied. Cause submitted.

D036999 Turner v. Laservision Productions, Inc.

Cause called on merits. Barry B. Kaufman, Esq. argued for appellant. Ronald Howard Kahn, Esq. argued for respondent. Mr. Kaufman replied. Cause submitted.

Court recessed at 10:35 a.m. until 1:30 p.m.

D038294 Al O'Rourke v. Superior Court of San Diego County

The Notice of/and Application for a Writ on the Federal vs. State Jurisdictional Question and/or further Permission to Prosecute Appeal, Declaraion of Al O'Rourke, Points and Authorities, Exhibits, is treated as an application for a prefilng order under Code of Civil Procedure section 391.7. The application is denied for lack of merit.

D037877 People v. Davis

The appeal is dismissed.

D037654 Perrino v. Perrino

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

D033607 Riel v. Wells Fargo Bank

The judgment is affirmed. Appellant to pay costs on appeal. O'Rourke, J.;
We Concur: Benke, Acting P.J., Huffman, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 11, 2001 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares
Clerk: D. E. Moore

D035148 People v. Applin

Cause called on merits. David M. McKinney, Esq. argued for appellant. Marilyn George, Deputy Attorney General argued for respondent. Mr. McKinney replied. Cause submitted.

D035066 People v. Brown

Cause called on merits. Roberta K. Thyfault, Esq. argued for appellant. Patti Ranger, Deputy Attorney General argued for respondent. Cause submitted.

D034832 People v. Carey

Cause called on merits. George Schraer, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Mr. Schraer replied. Cause submitted.

D035540 People v. Stokes

Cause called on merits. Peter B. Clarke, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Mr. Clarke replied. Cause submitted.

D035425 Jarrow Formulas, Inc. v. Biogenesis, Inc.

Cause called on merits. Neal Thomas Wiener, Esq. argued for appellant. Gary Andrew Myers, Esq. argued for respondent. Mr. Wiener replied. Cause submitted.

Court recessed at 3:10 p.m. until Thursday, July 12, 2001 at 9 a.m.

D037410 In re Eva P., a Juvenile

The judgment is affirmed. McDonald, J.; We Concur: Kremer, P.J., Huffman, J.

D035799 People v. Trac

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Nares, J.

D035679 People v. Hanna

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., Benke, J.

D038062 In re Phelps on Habeas Corpus

The petition is denied.

D037997 In re Elliott on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 11, 2001 (Continued)

D033482 In re Marriage of Duncan

The judgment is affirmed. Both parties to bear their own costs on appeal. CERTIFIED FOR PUBLICATION. Kremer, P.J.; We Concur: Benke, J., Nares, J.

D038108 People v. Korkis

As appellant filed an amended notice of appeal on June 21, 2001, which complies with the California Rules of Court, on the court's own motion, the order of dismissal of June 26, 2001 is vacated and the appeal is reinstated.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

July 12, 2001

D035962 Ash v. Safe Harbor II, LLC

The judgment is affirmed. Ash is awarded costs on appeal. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D037550 Tran et al. v. Friendly Hills Healthcare Network et al.

The judgment is affirmed. Appellants to pay costs on appeal. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D037901 In re L. on Habeas Corpus

The petition is denied.

D037548 Tatum-Kaplan Financial Group v. Fowler

The appeal is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

Clerk: D. E. Moore

D034505 Sinkula v. Farmers Insurance Exchange

Cause called on merits. H. Paul Kondrick, Esq. argued for appellant. Todd Picker, Esq. argued for respondent. Mr. Kondrick replied. Cause submitted.

D036195 People v. Littlejohn

Cause called on merits. Kyle Marie Wesendorf, Esq. argued for appellant. David Delgado-Rucci, Deputy Attorney General argued for respondent. Ms. Wesendorf replied. Cause submitted.

D035409 Quechan Indian Tribe v. County of Imperial

Cause called on merits. Mason D. Morisset, Esq. argued for appellant. Michael T. Gibbs, Esq. argued for respondent. Mr. Morisset replied. Cause submitted.

Court recessed at 10 a.m. until 1:30 p.m.

D034908 Fryery et al. v. Coyne Development, Inc. et al.

The judgment is reversed. Plaintiffs to recover costs on appeal. O'Rourke, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D038061 In re Brim on Habeas Corpus

The petition is denied.

D037714 Guerin v. Workers' Compensation Appeals Board and County of San Diego

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 12, 2001 (Continued)

D036525 Balance Sports Corporation v. Fischl et al.

The order is affirmed. Sanctions are denied. Fischl and Strom are awarded costs on appeal. O'Rourke, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D034448 People v. Watson
D037664 In re Watson on Habeas Corpus
D036721 In re Watson on Habeas Corpus

The pending petitions are consolidated with the pending appeal for disposition.

D034448 People v. Watson
D037664 In re Watson on Habeas Corpus
D036721 In re Watson on Habeas Corpus

The conviction for false imprisonment by violence is reversed. The superior court is directed to amend the abstract of judgment accordingly and forward a certified copy to the Department of Corrections. In all other respects, the judgment is affirmed. The petitions for habeas corpus are denied. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

D035818 Levine et al. v. The Guardian Life Insurance Company

The summary judgment is reversed; the order denying appellant's motion for class certification of his unfair competition law claims is affirmed. The matter is remanded for further proceedings consistent with this opinion. Appellant shall recover his costs on appeal. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith Haller
Clerk: D. E. Moore

D036144 Butler v. Harris

Cause called on merits. Jeffrey Warren Doeringer, Esq. argued for appellant. Paul W. Leehey, Esq. argued for respondent. Mr. Doeringer replied. Cause submitted.

D036375 People v. Scull
D036819 In re Scull on Habeas Corpus

Causes called on merits. Patrick Morgan Ford, Esq. argued for appellant. Jessica Adams, Certified Law Student argued for respondent. Mr. Ford replied. Cause submitted as to appeal only, D036375.

Court recessed at 2:40 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 12, 2001 (Continued)

D035265 People v. Gordon

Cause called on merits. Gisela Caldwell, Esq. argued for appellant. Teresa Torreblanca, Deputy Attorney General argued for respondent. Cause submitted.

D035895 Mitchell Management v. Community Convalescent Hospital of La Mesa

Cause called on merits. Leon E. Campbell, Esq. argued for appellant. Steven J. Simerlein, Esq. argued for respondent. Mr. Campbell replied. Cause submitted.

Court recessed at 3:30 p.m. until Friday, July 13, 2001 at 9:00 a.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

July 13, 2001

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Judith Haller and James McIntyre
Clerk: D. E. Moore

D035256 Passalacqua v. Marengo, et al.

Cause called on merits. Kenyon M. Young, Esq. argued for respondent, Marengo. Lee H. Roistacher, Esq. argued for respondent, Martin. John Morris, Esq. argued for respondent, Hale. John P. Stennett, Esq. replied for appellant. Cause submitted.

D035691 The Harrington Company v. Colonia Insurance Company

Cause called on merits. Jason D. Dumbeck, Esq. argued for appellant. Sarah Valentine, Esq. argued for respondent. Mr. Dumbeck replied. Cause submitted.

D035778 Klamt v. Fefer

Cause called on merits. Robert W. Jackson, Esq. argued for appellant. Anna Marie Deckert, Esq. argued for respondent. Mr. Jackson replied. Cause submitted.

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D035785 Knight and Carver Yachtcenter v. Wells Fargo Guard Services

Cause called on merits. Michael Battin, Esq. argued for appellant. Laurie Todd, Esq. argued for respondent. Mr. Battin replied. Cause submitted.

D037275 Beck v. County of Orange

Cause called on merits. Jerry N. Gans, Esq. argued for appellant. Daniel Robert Sullivan, Esq. argued for respondent. Mr. Gans replied. Cause submitted.

D037267 Villafana v. Union Oil Company of California

Cause called on merits. Naris Khalatian, Esq. argued for appellant. Larry Treglia, Esq. argued for respondent. Ms. Khalatian replied. Cause submitted.

Court recessed at 11:15 to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Gilbert Nares

D036879 Wells Fargo Bank v. Beck

Cause called on merits. Richard Heller, Esq. argued for respondent. Richard B. Beck, Esq. argued for appellant. Cause submitted.

Court recessed at 11:45 a.m. until 1 p.m.

Court reconvened at 1 p.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
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DIVISION ONE

July 13, 2001 (Continued)

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Judith Haller and James McIntyre
Clerk: D. E. Moore

D037554 McDonald v. United National Insurance Company

Cause called on merits. James Herbert Casello, Esq. argued for appellant, McDonald.
William Earl Baker, Esq. argued for appellant, Bartletts. Alan H. Lazar, Esq. argued for respondent.
Mr. Casello replied. Cause submitted.

D037544 Doesburg v. City of San Clemente

Cause called on merits. Shannon Roberts Boyd, Esq. argued for appellant/cross-respondent.
Robert Otway Owen, Esq. argued for respondent/cross-appellant. Mr. Boyd replied. Cause submitted.

D034533 Wohl v. Flynn, Sheridan & Tabb

Cause called on merits. James P. Wohl, Esq. argued for appellant/cross-respondent.
Philip H. Stillman, Esq. argued for respondent/cross-appellant. Mr. Wohl replied. Cause submitted.

Court adjourned at 2:20 p.m.

D034831 People v. Paige

The judgment is affirmed. Nares, J.; We Concur: Kremer, P.J., McDonald, J.